



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

AUG 10 2005

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Joseph M. Karas
Assistant Counsel
PPG Industries, Inc.
One PPG Place
Pittsburgh, PA 15272

Re: PPG Industries, Inc., Mt. Zion, Illinois, Consent Agreement and Final Order Docket
No. EPCRA-05-2005 0023 CERCLA-05-2005 0007

MM-05-2005 0003

Dear Mr. Karas:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. EPA has filed the other original CAFO with the Regional Hearing Clerk on August 10, 2005.

Please pay the civil penalty for the Comprehensive Environmental Response, Compensation, and Liability Act alleged violation in the amount of \$5,212.85 in the manner prescribed in paragraph 51, and reference your check with the number BD 0530550098 and docket number CERCLA-05-2005 0007. Your payment is due on September 9, 2005 (within thirty calendar days of the filing date).

Please pay the civil penalty for the Emergency Planning and Community Right-to-Know Act alleged violations in the amount of \$20,851.39 in the manner prescribed in paragraph 52, and reference your check with the number BD 054405018 and docket number EPCRA-05-2005 0023. Your payment is due on September 9, 2005 (within thirty calendar days of the filing date).

Please feel free to contact James Entzminger at (312) 886-4062 if you have any questions regarding the enclosed documents. Please direct any legal questions to Mony Chabria, Associate Regional Counsel, at (312) 886-6842. Thank you for your assistance in resolving this matter.

Sincerely yours,

Mark J. Horwitz, Chief
Office of Chemical Emergency
Preparedness & Prevention

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

~~EPCRA-05-2005~~ 0023

IN THE MATTER OF:

PPG Industries, Inc.
Mt. Zion-Elwin Road
Mt. Zion, Illinois 62549

) Docket No. ~~CERCLA-05-2005~~ 0007
)
) ~~MM-05-2005~~ 0003
) Proceeding to Assess a Civil
) Penalty under Section 109 of the
) Comprehensive Environmental
) Response, Compensation, and
) Liability Act and Section 325(c)
) of the Emergency Planning and
) Community Right-to-Know Act

Respondent.

RECEIVED
REGIONAL HEARING
CLERK
AUG 10 9 56 AM '05

U.S. ENVIRONMENTAL
PROTECTION AGENCY
REGION 5

Consent Agreement and Final Order
Preliminary Statement

1. This is an administrative action commenced and concluded under Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609; Section 325 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045; and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22 (2004).

2. Complainant is the Chief of the Office of Chemical Emergency Preparedness and Prevention, Superfund Division, United States Environmental Protection Agency, Region 5 ("Complainant" or "U.S. EPA").

3. The Respondent is PPG Industries, Inc., a corporation doing business in the State of Illinois ("Respondent" or "PPG").

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO). 40 C.F.R. § 22.13(b) (2004).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. PPG admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. PPG waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires a person in charge of a facility to immediately notify the National Response Center as soon as that person knows of a release of a hazardous substance from the facility in an amount equal to or greater than the substance's reportable quantity.

10. Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), requires that if a facility at which hazardous chemicals are produced, used, or stored releases a reportable quantity of an extremely hazardous substance and the release required, or occurred in a manner which would require, notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), the owner or operator of the facility must immediately notify the State Emergency Response Commission of any state likely to be affected by the release and the emergency coordinator for the Local Emergency Planning Committee for any area likely to be affected by the release.

11. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), requires that, as soon as practicable after a release which requires notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), the owner or operator of the facility must provide written follow-up emergency notice to the State Emergency Response Commission and the Local Emergency Planning Committee.

12. Under Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), the EPA Administrator may assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19 increased these statutory maximum penalties to \$27,500 per day of violation that occurred from January 31, 1997 through March 15, 2004 and to \$32,500 per

day of violation for violations that occurred after March 15, 2004.

13. Under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), the EPA Administrator may assess a civil penalty of up to \$25,000 per day of violation of EPCRA Section 304. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19 increased these statutory maximum penalties to \$27,500 per day of violation that occurred from January 31, 1997 through March 15, 2004 and to \$32,500 per day of violation for violations that occurred after March 15, 2004.

Factual Allegations

14. Respondent is a corporation incorporated in the State of Pennsylvania.

15. Respondent is a "person" as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

16. Respondent owns or operates a facility located at Mt. Zion-Elwin Road, Mt. Zion, Illinois (Respondent's Facility).

17. Respondent's Facility consists of a building, structure, installation, equipment, pipe or pipeline, storage container, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise comes to be located.

18. Respondent's Facility consists of buildings, equipment and structures which are located on a single site or on contiguous or adjacent sites and which are owned by the same person, entity, or corporation.

19. Respondent's Facility is a "facility" as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

20. Respondent's Facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

21. At all times relevant to this Complaint, Respondent was in charge of Respondent's Facility.

22. At all times relevant to this Complaint, Respondent owned or operated Respondent's Facility.

23. In the 24-hour period prior to February 1, 2004, at or about 4:37 a.m., Respondent's Facility released a quantity of anhydrous ammonia in excess of 100 pounds (the Release).

24. During the Release, approximately 711 pounds of anhydrous ammonia was released to the air.

25. Anhydrous ammonia (CAS #7664-41-7) is a "hazardous chemical" as that term is defined under Section 311(e) of EPCRA, 42 U.S.C. § 11021(e).

26. At all times relevant to this complaint, Respondent used, produced, or stored a hazardous chemical at Respondent's Facility.

27. Anhydrous ammonia (CAS #7664-41-7) is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), with a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

28. Anhydrous ammonia (CAS #7664-41-7) is an "extremely hazardous substance" according to Section 302 of EPCRA, 42 U.S.C. § 11002, with a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 355, Appendix A.

29. The Release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

30. The Release was likely to affect the State of Illinois.

31. The Release was likely to affect Macon County, Illinois.

32. At all times relevant to this Complaint, the Illinois State Emergency Response Commission was the state emergency response commission (SERC) for the State of Illinois.

33. At all times relevant to this Complaint, the Macon County Local Emergency Planning Committee was the local emergency planning committee (LEPC) for Macon County, Illinois.

34. Respondent had knowledge of the Release on February 1, 2004, at approximately 4:37 a.m., or, pleading in the alternative, Respondent had knowledge of the Release on February 2, 2004, at approximately 7:30 a.m.

35. Respondent did not notify the National Response Center of the Release until February 2, 2004, at 11:15 a.m.

36. Respondent did not immediately notify the National Response Center as soon as Respondent had knowledge of the Release.

37. Respondent notified the SERC of the Release on February 2, 2004, at 10:45 a.m.

38. Respondent did not notify the SERC immediately after Respondent had knowledge of the Release.

39. Respondent did not notify the LEPC immediately after Respondent had knowledge of the Release.

40. The Release required notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

41. Respondent provided a written follow-up emergency notice of the Release to the SERC on February 27, 2004.

42. Respondent did not provide the SERC with a written follow-up emergency notice of the Release as soon as practicable after the Release occurred.

43. Respondent provided a written follow-up emergency notice of the Release to the LEPC on February 27, 2004.

44. Respondent did not provide the LEPC with a written follow-up emergency notice of the Release as soon as practicable after the Release occurred.

Violations

45. Respondent's failure to notify immediately the National Response Center of the Release violated Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

46. Respondent's failure to notify immediately the SERC of the Release violated Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

47. Respondent's failure to immediately notify the LEPC of the Release violated Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

48. Respondent's failure to provide a written follow-up emergency notice to the SERC as soon as practicable after the Release occurred violated Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).

49. Respondent's failure to provide a written follow-up emergency notice to the LEPC as soon as practicable after the Release occurred violated Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).

Civil Penalty

50. In consideration of Respondent's agreement to perform a supplemental environmental project, and Respondent's cooperation and willingness to quickly resolve this matter, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$26,064.24.

51. Within 30 days after the effective date of this CAFO, Respondent must pay a \$5,212.85 civil penalty for the CERCLA violation. Respondent must pay the penalty by sending a cashier's or certified check, payable to "EPA Hazardous Substance Superfund," to:

U.S. EPA, Region 5
ATTN: Superfund Accounting
P.O. Box 70753
Chicago, Illinois 60673

The check must note the case title of this matter: In the Matter of PPG Industries, Inc., the docket number of this CAFO and the billing document number 05305T009B.

52. Within 30 days after the effective date of this CAFO, Respondent must pay a \$20,851.39 civil penalty for the EPCRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA, Region 5
ATTN: Finance
P.O. Box 70753
Chicago, Illinois 60673

The check must note the case title of this matter: In the Matter of PPG Industries, Inc., the docket number of this CAFO and the billing document number 054405018.

53. A transmittal letter, stating the case title, Respondent's complete address, the case docket number and the

billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk, (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

James Entzminger, (SC-6J)
Office of Chemical Emergency
Preparedness and Prevention
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

Mony Chabria, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

54. This civil penalty is not deductible for federal tax purposes.

55. If Respondent does not timely pay the civil penalty, or any stipulated penalties due under paragraph 67, below, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

56. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past

due. In addition, U.S. EPA will assess a six percent per year penalty on any principal amount not paid within 90 days of the date that this CAFO has been entered by the Regional Hearing Clerk.

Supplemental Environmental Project

57. Respondent must complete the supplemental environmental project (SEP) designed to protect the environment or public health by purchasing and donating to the Mt. Zion Fire Department two thermal imaging cameras and one air compressor.

58. At its Mt. Zion, Illinois facility, Respondent must complete the SEP as follows:

a. Within 12 weeks of the effective date of the CAFO, Respondent shall purchase and donate to the Mt. Zion Illinois Fire Department two thermal imaging cameras and one air compressor.

59. Respondent must spend at least \$17,000 to purchase and donate the cameras and \$29,550 to purchase and donate the air compressor to the Mt. Zion Illinois Fire Department.

60. Respondent certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

61. Respondent must maintain copies of the underlying research and data for all reports submitted to U.S. EPA according

to this CAFO. Respondent must provide the documentation of any underlying research and data to U.S. EPA within seven days of U.S. EPA's request for the information.

62. Within 114 days of the effective date of the CAFO, Respondent must submit a SEP completion report to U.S. EPA. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any problems and the actions taken to correct the problems;
- c. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. A statement from the Mt. Zion Illinois Fire Department Chief identifying what equipment was received and when the equipment was received; and
- e. Certification that Respondent has completed the SEP in compliance with this CAFO.

63. Respondent must submit all notices and reports required by this CAFO by first class mail to:

James Entzminger (SC-6J)
Office of Chemical Emergency
Preparedness and Prevention
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

64. In the SEP completion report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, the information is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

65. Following receipt of the SEP completion report described in paragraph 62 above, U.S. EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 67.

66. If U.S. EPA exercises option b. above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that U.S. EPA imposes in its decision. If Respondent does not complete the SEP as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 67 below.

67. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

a. Except as provided in subparagraph b, below, if PPG did not complete the SEP satisfactorily according to this CAFO, PPG must pay a stipulated penalty of \$26,289.

b. If PPG did not complete the SEP satisfactorily, but U.S. EPA determines that PPG: (i) made good faith and timely efforts to complete the SEP; and (ii) certified, with supporting documents, that it spent at least 90 percent of the required amount on the SEP, PPG will not be liable for any stipulated penalty.

c. If PPG satisfactorily completed the SEP, but spent less than 90 percent of the required amount on the SEP, PPG must pay a stipulated penalty of the difference between the amount spent and \$26,289.

d. If PPG failed to submit timely the SEP completion report required by paragraph 62 above, PPG must pay a stipulated penalty of \$500 for each day after the report was due until it submits the report.

68. U.S. EPA's determinations of whether Respondent satisfactorily completed the SEP and whether it made good faith, timely efforts to complete the SEP will bind Respondent.

69. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraphs 51-53, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts. Respondent will pay one-fifth of the stipulated penalty to the "EPA Hazardous

Substance Superfund" and four-fifths to "Treasurer, United States of America."

70. Any public statement that Respondent makes referring to the SEP must include the following language, "Respondent undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Respondent for violations of Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act and Section 304 of the Emergency Planning and Community Right-To-Know Act."

71. Nothing in this CAFO is intended to nor will be construed to constitute U.S. EPA approval of the equipment or technology donated by Respondent in connection with the SEP under the terms of this Agreement.

General Provisions

72. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

73. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

74. This CAFO does not affect Respondent's responsibility to comply with EPCRA and CERCLA and other applicable federal, state and local laws, and regulations.

75. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for Section 304 of EPCRA and Section 103 of CERCLA.

76. The terms of this CAFO bind Respondent and its successors, and assigns.

77. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

78. Each party agrees to bear its own costs and fees, including attorneys' fees, in this action.

79. This CAFO constitutes the entire agreement between the parties.

U.S. Environmental Protection Agency, Complainant

Date: 8/1/05

By: Mark J. Horwitz
Mark J. Horwitz, Chief
Office of Chemical Emergency
Preparedness and Prevention
Superfund Division
Region 5

Date: 8-1-05

By: Richard C. Karl
Richard C. Karl, Director
Superfund Division
U.S. EPA, Region 5 Division
Region 5

PPG Industries, Inc., Respondent

Date: 7/28/05

Signature: Phillip D. Burns
Name (print): PHILLIP D. BURNS
Title: PLANT MANAGER
PPG Industries, Inc.

In the Matter of:
PPG Industries, Inc.
Mt. Zion-Elwin Road
Mt. Zion, Illinois 62549
Docket No. EPCRA-05-2005 0023

CERCLA-05-2005 0007

MM-05-2005 0003

FINAL ORDER

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. IT IS SO ORDERED.

Date: 8/9/05

By: *Bharat Mathur*
for Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

In the Matter of:
PPG Industries, Inc.
Mt. Zion-Elwin Road
Mt. Zion, Illinois 62549
Docket No. ~~EPGRA-05-2005-0023~~

~~CERCLA-05-2005 0007~~

~~MM-05-2005 0003~~

CERTIFICATE OF SERVICE

I, James Entzminger, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number ~~EPCRA-05-2005 0023~~ ~~GERCLA-05-2005 0007~~ ~~MM-05-2005 0003~~ to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, personally served a copy on the Regional Judicial Officer, and mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to PPG Industries, Inc.'s Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Joseph M. Karas, Assistant Counsel
PPG Industries, Inc.
One PPG Place
Pittsburgh, PA 15272

on the 10 day of August, 2005.

RECEIVED
REGIONAL HEARING
CLERK

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US ENVIRONMENTAL
PROTECTION AGENCY
REGION V



James Entzminger
U.S. Environmental Protection Agency
Region 5